

**STATE OF NEW MEXICO**  
**ENVIRONMENT DEPARTMENT**



**REQUEST FOR PROPOSALS**

**RFP: 07-667-30-01374**

**REQUEST FOR PROPOSALS TO CONDUCT  
AN AIR QUALITY MODELING STUDY  
FOR THE FOUR CORNERS REGION**

**APRIL 2, 2007**

**REQUEST FOR PROPOSALS TO CONDUCT  
AN AIR QUALITY MODELING STUDY  
FOR THE FOUR CORNERS REGION**

**TABLE OF CONTENTS**

<b>I. INTRODUCTION .....</b>	<b>1</b>
PURPOSE .....	1
DEFINITION OF TERMINOLOGY .....	1
SCOPE OF PROCUREMENT .....	3
TIME PERIOD .....	3
ACKNOWLEDGEMENT OF RECEIPT .....	3
BACKGROUND .....	3
<b>II. SCOPE OF WORK .....</b>	<b>4</b>
SPECIFIC REQUIREMENTS .....	4
1. <i>Development of Modeling Protocol</i> .....	4
2. <i>CAMx Modeling</i> .....	4
<b>III. CONDITIONS GOVERNING THE PROCUREMENT .....</b>	<b>5</b>
SEQUENCE OF EVENTS .....	5
PROCUREMENT MANAGER .....	5
CONTENTS OF PROPOSALS .....	6
1. <i>Corporate Experience</i> .....	6
2. <i>Corporate References</i> .....	6
3. <i>Offeror Staff Experience</i> .....	6
4. <i>Project Approach</i> .....	6
5. <i>Cost</i> .....	7
SUBMISSION OF PROPOSALS .....	7
<b>IV. EVALUATION .....</b>	<b>8</b>
REQUIRED KNOWLEDGE, SKILLS AND ABILITIES .....	8
POINTS .....	8
1. <i>Project Approach</i> .....	8
2. <i>Experience and References</i> .....	8
3. <i>Cost</i> .....	8
EVALUATION FACTORS .....	9
1. <i>Project Approach</i> .....	9
2. <i>Experience and References</i> .....	9
3. <i>Cost</i> .....	9
 APPENDIX A - FOUR CORNERS REGION MAP .....	 10
APPENDIX B - ACKNOWLEDGEMENT OF RECEIPT FORM .....	12
APPENDIX C - CONTRACT BOILER PLATE FORM .....	14
APPENDIX D - CAMPAIGN CONTRIBUTION DISCLOSURE FORM .....	23

**Published March 26, 2007**

## **REQUEST FOR PROPOSALS TO CONDUCT AN AIR QUALITY MODELING STUDY FOR THE FOUR CORNERS REGION**

### **I. INTRODUCTION**

#### **Purpose**

The Air Quality Bureau (AQB) of the New Mexico Environment Department (NMED) requests proposals to develop a modeling analysis utilizing the CAMx model to predict criteria pollutant (ozone and particle) concentrations, as well as visibility, sulfur and nitrogen deposition in accordance with available U.S. Environmental Protection Agency (EPA) guidance for the year 2005. The study area is the Four Corners region as shown in Appendix A. At least five scenarios including mitigation options developed by the Four Corners Air Quality Task Force will be modeled.

#### **Definition of Terminology**

This section contains definitions and abbreviations that are used throughout this procurement document.

"Act" means the federal Clean Air Act

"Agency" means the New Mexico Environment Department, Air Quality Bureau.

"AQB" means the New Mexico Environment Department, Air Quality Bureau

"Bureau" means the New Mexico Environment Department, Air Quality Bureau

"CAA" means the federal Clean Air Act.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful offeror who enters into a binding contract.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

"Determination" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

"DFA" means the Department of Finance and Administration for the State of New Mexico.

"EPA" means the United States Environmental Protection Agency

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the State Purchasing Agent for contract award. It contains all written determinations resulting from the procurement.

"Evaluation Committee" means a body appointed by the Agency management to perform the evaluation of offeror proposals.

"Finalist" is defined as an offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

"NAAQS" means the National Ambient Air Quality Standards

"NMED" means the New Mexico Environment Department

"NMSA" means the New Mexico Statutes Annotated

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Procurement Manager" means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

"RFP" means Request for Proposals

"State Purchasing Agent" or "SPA" means the purchasing agent for the State of New Mexico or a designated representative.

"State" means the State of New Mexico

### **Scope of Procurement**

The scope of procurement shall encompass the work and other requirements detailed in Section III – Scope of Work.

### **Time Period**

The scope of work under this RFP should be completed by September 1, 2007.

### **Acknowledgement of Receipt**

Potential offerors should hand deliver or return by facsimile, by e-mail or by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document (see Appendix B) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on April 2, 2007.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror's organization name shall not appear on the distribution list.

### **Background**

In December 2002, NMED, EPA, the Cities of Aztec, Bloomfield and Farmington, and San Juan County, NM entered into a voluntary agreement to research and analyze air quality in northwestern New Mexico with respect to the 8-hour standard for ground-level ozone. In addition to ozone, agencies in the region are concerned about particulate matter, mercury, visibility at Class I areas, and deposition.

In November 2005, the states of New Mexico and Colorado convened the Four Corners Air Quality Task Force to bring together a diverse group of interested parties to learn about and discuss air quality issues in the Four Corners area. The Task Force is developing a broad list of options for improving air quality in the region. The Task Force is developing mitigation options regarding oil and gas development, power plants, and other sources such as transportation, dirt roads, development and fire. From these options, the state and federal agencies will develop five scenarios to be modeled to determine the potential impact of implementing these scenarios.

The modeling results will be used by regulatory agencies to determine which mitigation options or scenarios are most beneficial for implementation.

## II. SCOPE OF WORK

The selected contractor will develop the modeling protocol and perform CAMx modeling for five scenarios selected by the Four Corners Air Quality Task Force Modeling Work Group. Scenarios will include mitigation options developed by the Four Corners Air Quality Task Force. These mitigation options may include mitigation for oil and gas sources, power plants, or other sources such as transportation, energy efficiency, or renewable energy.

### Specific Requirements

#### 1. Development of Modeling Protocol

- a. Develop a modeling protocol for the CAMx model to predict criteria pollutant (ozone and particle concentrations), as well as visibility, sulfur and nitrogen deposition in accordance with available EPA guidance for the year 2005. A 2005 and 2018 base case and five mitigation options will be modeled. Gridded emissions inventory and MM5 meteorological data for the modeling analysis will be provided. Focus of modeling should be on Mesa Verde, San Pedro Parks and Weminuche Class I areas and surrounding Class II areas.
- b. Consult with the Four Corners Air Quality Task Force Modeling Work Group to review and revise the protocol, including grid specifications, and format of results and deliverables. A nested grid with a minimum resolution of 4 km should be used in the immediate four corners region as shown in Appendix A.
- c. Deliverable: A draft modeling protocol due within 2 months after the contract is signed.

#### 2. CAMx Modeling

- a. Complete 2005 and 2018 base case modeling and at least five mitigation option SIP-quality modeling analyses according to the approved modeling protocol, using inputs provided by NMED, consistent with EPA's modeling guidance. Four Corners Air Quality Task Force Modeling Work Group will specify the mitigation scenarios to be conducted.
- b. Evaluate model performance against existing ambient data in the region and conduct diagnostic analysis of any major performance shortcomings.
- c. Analyze results and provide output products to AQB in accordance with modeling protocol.
- d. Prepare PowerPoint presentation to summarize results of modeling. Present results at November Four Corners Air Quality Task Force meeting.
- e. Deliverable: Modeling report, input and output files due within six months after the contract is signed.

### **III. CONDITIONS GOVERNING THE PROCUREMENT**

#### **Sequence of Events**

<b>Action</b>	<b>Date</b>
1. Request for Proposals (RFP) issued by the NM Environment Department, Air Quality Bureau.	4/2/07
2. Potential offerors return Acknowledgement of Receipt Form	4/9/07
2. Deadline for potential offerors to submit written questions to Procurement Manager.	4/16/07
3. Procurement Manager's response to written questions and RFP amendments.	4/23/07
4. Proposals submitted by offerors to the Procurement Manager listed below.	4/30/07
5. Proposals evaluated and finalist selected by the Bureau.	5/7/07
6. Contract negotiated between finalist and the Bureau.	5/14/07
7. Contract award to finalist.	5/21/07
8. Protest Deadline	6/5/07

#### **Procurement Manager**

The procurement manager for this request for proposals is:

Rita Trujillo  
Air Quality Bureau  
New Mexico Environment Department  
2048 Galisteo  
Santa Fe, NM 87505  
Telephone: 505-955-8024  
Fax: 505-827-1543  
E-mail Address: rita.trujillo@state.nm.us

All inquiries regarding the RFP or its supporting documentation should be made to the procurement manager. Offerors may also consult with the procurement manager regarding minor details of format and scope of work content.

All deliveries via express carrier should be addressed as follows:

Rita Trujillo  
Air Quality Bureau  
New Mexico Environment Department  
2048 Galisteo  
Santa Fe, NM 87505

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Department.

### **Contents of Proposals**

#### **1. Corporate Experience**

Offerors must submit a statement of relevant corporate experience, including experience of subcontractors. The documentation must thoroughly describe how the offeror has supplied expertise for similar contracts and work related to development of air quality dispersion modeling protocols and experience with CAMx modeling.

#### **2. Corporate References**

Proposals must include three (3) external client references from clients who received similar services. In addition, three (3) references must be submitted for each proposed subcontractor. The minimum information that must be provided about each reference is:

- a. Name of individual or company services were provided for
- b. Address of individual or company
- c. Name of contact person
- d. Telephone number of contact person
- e. Type of services provided and dates services were provided

#### **3. Offeror Staff Experience**

Offerors must submit resumes of all proposed professional staff members who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience.

#### **4. Project Approach**

Offerors must submit a thorough project approach as part of the proposal. At a minimum, the project approach must include a proposed methodology and a milestone chart including tasks to be performed.



#### 5. Cost

Offerors must propose one firm, fixed, fully-loaded cost for conducting this project. The proposed cost must include any travel, per diem, fringe benefits and any overhead costs for contractor personnel if appropriate. New Mexico gross receipts taxes must be included in the total cost proposal.

#### 6. Campaign Contribution Disclosure Form

Every offeror shall attach the Campaign Contribution Disclosure Form, Attachment D, indicating whether the offeror, a family member of the offeror or a representative of the offeror has made a campaign contribution in the aggregate of \$250 or more to the Governor of the State of New Mexico within the past two years from the date the offeror submits a proposal. If no contribution was made, the offeror shall make a statement that no contribution was made.

### **Submission of Proposals**

An original and three copies of the proposal must be submitted by registered mail, or delivered in person for review to Rita Trujillo at the above address **by the close of business (5:00 pm Mountain Daylight Time) on April 30, 2007. Proposals received after this deadline will not be accepted.** Proposals must include the completed and signed Campaign Contributions Disclosure Form (Appendix D).

Pursuant to NMSA 1978, Section 13-1-116 of the Procurement Code, the contents of any proposals shall not be disclosed so as to be available to competing offerors during the negotiation process.

### **Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

### **Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

### **Contract Terms and Conditions**

The contract between the Agency and a contractor will follow the format specified by the New Mexico Environment Department and the New Mexico Department of Finance and Administration (DFA), set forth in Appendix C, "Contract Terms and Conditions". The Bureau reserves the right to negotiate contract provisions in addition to those stipulated in this RFP with the selected organization. All contracts are subject to the review and approval of DFA pursuant to NMSA 1978, 13-1-118, of the Procurement Code and DFA Rule 2.40.2 NMAC,

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Agency. If an offeror objects to any of the terms and conditions in Appendix C, that offeror must propose specific alternative language. The Agency may negotiate or may not accept the alternative language. Offerors must provide a brief description of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

### **Procurement Code Violation**

The Procurement Code, Section 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

## **IV. EVALUATION**

Each proposal will be evaluated by an evaluation committee comprised of AQB staff. All proposals will be reviewed for compliance with the requirements stipulated in this RFP. Proposals found not to be in substantial compliance will be eliminated from further consideration. Offerors who have been chosen as Finalists may be invited to give a presentation to the evaluation committee prior to final selection and award of contract.

**The Department reserves the right to reject any or all proposals when it is in the best interest of the State to do so.**

### **Required Knowledge, Skills and Abilities**

The selected Contractor will have an in-depth knowledge of photochemical modeling analysis. Technical writing and communications skills are necessary to create meaningful presentations regarding the status of the project and final results.

### **Points**

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual proposals. Points will be awarded on the basis of the following evaluation factors:

1. Project Approach	
Evaluation of narrative statement and Proposed Methodology	<u>25</u>
2. Experience and References	
Proposed project corporate and staff members relevant experience	<u>50</u>
References	<u>50</u>
3. Cost	
Cost of proposed work	<u>75</u>
<u>Total</u>	<u>200</u>

## Evaluation Factors

### 1. Project Approach

Up to 25 points will be awarded based upon the technical merit to the project approach including the thoroughness, understanding and applicability of the approach.

- a. Technical merit will be based on the following:
- b. The adequacy of the narrative statements, and
- c. The thoroughness, applicability and technical expertise of the offeror demonstrated by the proposed methodology.

### 2. Experience and References

Up to 100 points will be awarded based upon the offeror's corporate and proposed staff experience, and experience on similar projects. This award will include the offeror's corporate references with regard to customer satisfaction, quality and timeliness of work performed for previous clients and the company's experience in successfully and promptly completing tasks similar to the tasks to be performed pursuant to this RFP. These written references will be provided with the proposals and contact information from the references provided as a part of the proposal.

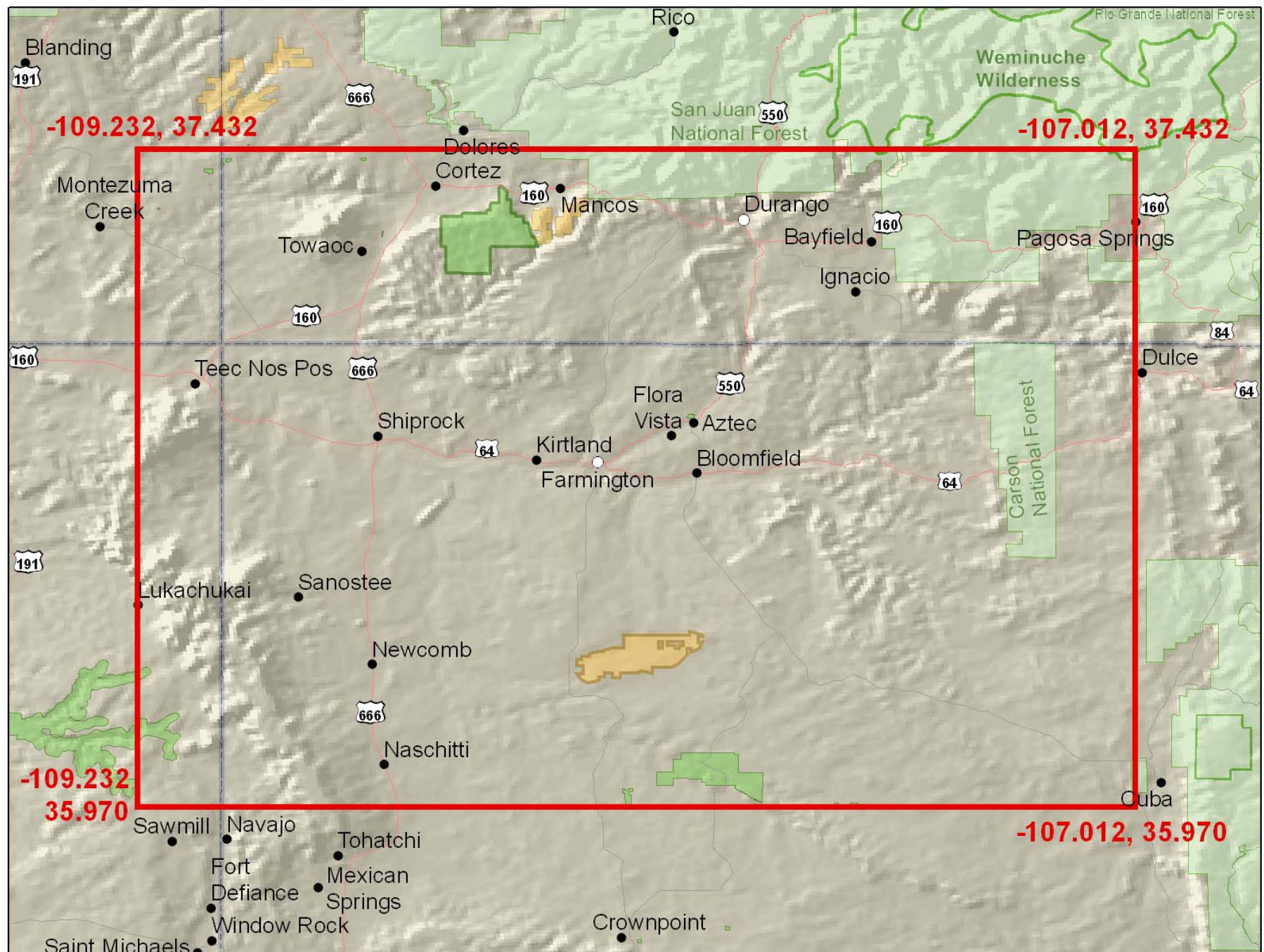
### 3. Cost

The evaluation of each offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Grand Total Cost}}{\text{This Offeror's Grand Total Cost}} \times 75 = \text{Points Award}$$

## **APPENDIX A**

### **Four Corners Region Map**



## **APPENDIX B**

### **Acknowledgement of Receipt Form**

REQUEST FOR PROPOSALS TO CONDUCT  
AN AIR QUALITY MODELING STUDY  
FOR THE FOUR CORNERS REGION

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on \_\_\_\_\_. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

Rita Trujillo  
Procurement Manager  
Air Quality Bureau  
New Mexico Environment Department  
2048 Galisteo  
Santa Fe, NM 87505  
Telephone: 505-955-8024  
Fax: 505-827-1543  
E-mail Address: rita.trujillo@state.nm.us

## **APPENDIX C**

### **Contract Boiler Plate Form**



**STATE OF NEW MEXICO**  
**NAME OF AGENCY**  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as (the "Agency") and **NAME OF CONTRACTOR**, hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA")

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

A. The Contractor shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION)

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

(or reference an Attachment 1, see below)

**2. Compensation.**

A. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein.**

B. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT) (as set forth in Paragraph A) excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

**CHOICE – MULTI-YEAR** – The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_

dollars (\$\_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

### **3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

### **4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES

**NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal

affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

**20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**21. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**22. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**23. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: [insert name, address and email].

To the Contractor: [insert name, address and email].

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Legal Counsel –Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: \_\_\_\_\_  
DFA Contracts Review Bureau

Date: \_\_\_\_\_

## **Attachment 1**

### **Scope of Work**

### **Performance Measures**

*(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")*

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

**Example:** Goal: Reduce or Increase or Other Service [insert blank].<sup>1</sup>

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.<sup>2</sup>

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

**OR:** Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below *(insert additional language if necessary to describe how Contractor's work will assist the Agency to fulfill its duties)*.

---

<sup>1</sup> A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

<sup>2</sup> An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.



## **APPENDIX D**

### **Campaign Contribution Disclosure Form**

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation

expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Person”** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**“Prospective contractor”** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

#### DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_

Signature

Date

\_\_\_\_\_  
Title (position)

**--OR--**

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)